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13 FLOWERS BAKING CO. OF HENDERSON, LLC  
(also sued as FBC OF HENDERSON, LLC)

14 ADDITIONAL COUNSEL LISTED BELOW

15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 RICHARD BUTTON, an individual, on  
18 behalf of himself and others similarly  
19 situated,

20 Plaintiff,

21 v.

22 FLOWERS BAKING CO. OF  
23 HENDERSON, LLC, a Nevada limited  
liability company; FBC OF  
24 HENDERSON, LLC, a business entity,  
form unknown; and DOES 1 through  
50, inclusive,

25 Defendants.  
26  
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Case No. 2:18-cv-10116-RGK (ASx)

**PROTECTIVE ORDER**

Complaint Filed: October 15, 2018  
Trial Date: None Set

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6 Attorneys for Plaintiff  
7 RICHARD BUTTON  
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1 Plaintiff RICHARD BUTTON (“Plaintiff”) and defendant FLOWERS  
2 BAKING CO. OF HENDERSON, LLC (also sued as FBC OF HENDERSON, LLC)  
3 (“Defendant”) (together, the “Parties”), by and through their counsel, stipulate as  
4 follows:

5 1. **PURPOSES AND LIMITATIONS**

6 Discovery in this action is likely to involve production of confidential,  
7 proprietary, or private information for which special protection from public  
8 disclosure and from use for any purpose other than prosecuting this litigation may be  
9 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter  
10 the following Stipulated Protective Order. The Parties acknowledge that this Order  
11 does not confer blanket protections on all disclosures or responses to discovery and  
12 that the protection it affords from public disclosure and use extends only to the  
13 limited information or items that are entitled to confidential treatment under the  
14 applicable legal principles. The Parties further acknowledge, as set forth in Section  
15 12.3, below, that this Stipulated Protective Order does not entitle them to file  
16 confidential information under seal; Civil Local Rule 79- sets forth the procedures  
17 that must be followed and the standards that will be applied when a party seeks  
18 permission from the court to file material under seal.

19 1.1 Good Cause Statement. This action is likely to involve trade secrets,  
20 customer and pricing lists and other valuable research, development, commercial,  
21 financial, and/or proprietary information for which special protection from public  
22 disclosure and from use for any purpose other than prosecution of this action is  
23 warranted. Such confidential and proprietary materials and information consist of,  
24 among other things, confidential business or financial information, information  
25 regarding confidential business practices, or other confidential research,  
26 development, or commercial information (including information implicating privacy  
27 rights of third parties), information otherwise generally unavailable to the public, or  
28 which may be privileged or otherwise protected from disclosure under state or federal

1 statutes, court rules, case decisions, or common law. In particular, business  
2 competitors of Defendant could obtain an unfair advantage, Defendant could be  
3 economically prejudiced, and the privacy rights of Defendant's current and/or former  
4 employees or contractors could be violated if any of the confidential information  
5 identified above is published for purposes outside those permitted in this Stipulated  
6 Protective Order. Accordingly, to expedite the flow of information, to facilitate the  
7 prompt resolution of disputes over confidentiality of discovery materials, to  
8 adequately protect information the Parties are entitled to keep confidential, to ensure  
9 that the Parties are permitted reasonable necessary uses of such material in  
10 preparation for and in the conduct of trial, to address their handling at the end of the  
11 litigation, and serve the ends of justice, a protective order for such information is  
12 justified in this matter. It is the intent of the Parties that information will not be  
13 designated as confidential for tactical reasons and that nothing be so designated  
14 without a good-faith belief that it has been maintained in a confidential, non-public  
15 manner, and there is good cause why it should not be part of the public record of this  
16 case.

17 **2. DEFINITIONS**

18 2.1 Challenging Party: a Party or Non-Party that challenges the designation  
19 of information or items under this Order.

20 2.2 "CONFIDENTIAL" Information or Items: information (regardless of  
21 how it is generated, stored or maintained) or tangible things that qualify for  
22 protection under the provisions of Paragraph 1, above.

23 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House  
24 Counsel (as well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or  
26 items that it produces in disclosures or in responses to discovery as  
27 "CONFIDENTIAL."

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1       2.5    Disclosure or Discovery Material: all items or information, regardless of  
2 the medium or manner in which it is generated, stored, or maintained (including,  
3 among other things, testimony, transcripts, and tangible things), that are produced or  
4 generated in disclosures or responses to discovery in this matter.

5       2.6    Expert: a person with specialized knowledge or experience in a matter  
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
7 an expert witness or as a consultant in this action.

8       2.7    In-House Counsel: attorneys who are employees of a party to this  
9 action. In-House Counsel does not include Outside Counsel of Record or any other  
10 outside counsel.

11       2.8    Non-Party: any natural person, partnership, corporation, association, or  
12 other legal entity not named as a Party to this action.

13       2.9    Outside Counsel of Record: attorneys who are not employees of a party  
14 to this action but are retained to represent or advise a party to this action and have  
15 appeared in this action on behalf of that party or are affiliated with a law firm which  
16 has appeared on behalf of that party.

17       2.10   Party: any party to this action, including all of its officers, directors,  
18 employees, consultants, retained experts, and Outside Counsel of Record (and their  
19 support staffs).

20       2.11   Producing Party: a Party or Non-Party that produces Disclosure or  
21 Discovery Material in this action.

22       2.12   Professional Vendors: persons or entities that provide litigation support  
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
25 and their employees and subcontractors.

26       2.13   Protected Material: any Disclosure or Discovery Material that is  
27 designated as "CONFIDENTIAL."

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2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. **SCOPE**

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. **DURATION**

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law. The Court retains jurisdiction over the parties for enforcement of the provisions of this Order following the conclusion of this action.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

3 Each Party or Non-Party that designates information or items for protection under  
4 this Order must take care to limit any such designation to specific material that  
5 qualifies under the appropriate standards. The Designating Party must designate for  
6 protection only those parts of material, documents, items, or oral or written  
7 communications that qualify – so that other portions of the material, documents,  
8 items, or communications for which protection is not warranted are not swept  
9 unjustifiably within the ambit of this Order.

10 If it comes to a Designating Party's attention that information or items that it  
11 designated for protection do not qualify for protection, that Designating Party must  
12 promptly notify all other Parties that it is withdrawing the mistaken designation.

13 **5.2 Manner and Timing of Designations.** Except as otherwise provided in  
14 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
15 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
16 under this Order must be clearly so designated before the material is disclosed or  
17 produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic  
20 documents, but excluding transcripts of depositions or other pretrial or trial  
21 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each  
22 page that contains protected material. If only a portion or portions of the material on  
23 a page qualifies for protection, the Producing Party also must clearly identify the  
24 protected portion(s) (e.g., by making appropriate markings in the margins).

25 A Party or Non-Party that makes original documents or materials  
26 available for inspection need not designate them for protection until after the  
27 inspecting Party has indicated which material it would like copied and produced.  
28 During the inspection and before the designation, all of the material made available

for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony; alternatively, in the case of depositions, other pretrial testimony, the transcripts thereof, and exhibits thereto, by written notice to opposing counsel.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a



Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party will initiate the dispute resolution process (and, if necessary, file a discovery motion) under Local Rule 37-1 *et seq.* and as directed by the Magistrate Judge's chambers rules.

6.3 Burden of Persuasion. The burden of persuasion in any such challenge proceeding will be on the Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties will continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

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1           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the court or permitted in writing by the Designating Party, a  
3 Receiving Party may disclose any information or item designated  
4 “CONFIDENTIAL” only to:

5                   (a) the Receiving Party’s Outside Counsel of Record in this action, as  
6 well as employees of said Outside Counsel of Record to whom it is reasonably  
7 necessary to disclose the information for this litigation;

8                   (b) the Receiving Party and any officers, directors, and employees  
9 (including In-House Counsel) of the Receiving Party to whom disclosure is  
10 reasonably necessary for this litigation and who have signed the “Acknowledgment  
11 and Agreement to Be Bound” (Exhibit A);

12                   (c) the Designating Party and any officers, directors, managers, and  
13 employees of the Designating Party;

14                   (d) Experts (as defined in this Order) of the Receiving Party to whom  
15 disclosure is reasonably necessary for this litigation and who have signed the  
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17                   (e) the Court and its personnel;

18                   (f) court reporters and their staff, professional jury or trial consultants,  
19 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary  
20 for this litigation and who have signed the “Acknowledgment and Agreement to Be  
21 Bound” (Exhibit A);

22                   (g) during their depositions, witnesses in the action to whom disclosure  
23 is reasonably necessary and who have signed the “Acknowledgment and Agreement  
24 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or  
25 ordered by the court. Pages of transcribed deposition testimony or exhibits to  
26 depositions that reveal Protected Material must be separately bound by the court  
27 reporter and may not be disclosed to anyone except as permitted under this Stipulated  
28 Protective Order.

1 (h) the author or recipient of a document containing the information or a  
2 custodian or other person who otherwise possessed or knew the information; and

3 (i) any person who previously was an officer, director, manager,  
4 employee or agent of an entity that previously had access to the information,  
5 document, and/or item that has been designated “CONFIDENTIAL” to whom  
6 disclosure is reasonably necessary for this litigation.

7 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
8 **PRODUCED IN OTHER LITIGATION**

9 If a Party is served with a subpoena or a court order issued in other litigation  
10 that compels disclosure of any information or items designated in this action as  
11 “CONFIDENTIAL,” that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification shall  
13 include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to  
15 issue in the other litigation that some or all of the material covered by the subpoena  
16 or order is subject to this Protective Order. Such notification shall include a copy of  
17 this Stipulated Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued  
19 by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with  
21 the subpoena or court order shall not produce any information designated in this  
22 action as “CONFIDENTIAL” before a determination by the court from which the  
23 subpoena or order issued, unless the Party has obtained the Designating Party’s  
24 permission. The Designating Party shall bear the burden and expense of seeking  
25 protection in that court of its confidential material – and nothing in these provisions  
26 should be construed as authorizing or encouraging a Receiving Party in this action to  
27 disobey a lawful directive from another court.

1 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**  
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a Non-  
4 Party in this action and designated as "CONFIDENTIAL." Such information  
5 produced by Non-Parties in connection with this litigation is protected by the  
6 remedies and relief provided by this Order. Nothing in these provisions should be  
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to  
9 produce a Non-Party's confidential information in its possession, and the Party is  
10 subject to an agreement with the Non-Party not to produce the Non-Party's  
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party  
13 that some or all of the information requested is subject to a confidentiality agreement  
14 with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated  
16 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the Non-  
19 Party.

20 (c) If the Non-Party fails to object or seek a protective order from this court  
21 within 14 days of receiving the notice and accompanying information, the Receiving  
22 Party may produce the Non-Party's confidential information responsive to the  
23 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
24 Party shall not produce any information in its possession or control that is subject to  
25 the confidentiality agreement with the Non-Party before a determination by the court.  
26 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
27 of seeking protection in this court of its Protected Material.

28 ///

10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Further, no party shall be held to have waived any right or legally-cognizable privilege or evidentiary protection by such inadvertent production. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. **MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. Without written permission from the  
4 Designating Party or a court order secured after appropriate notice to all interested  
5 persons, a Party may not file in the public record in this action any Protected  
6 Material. A Party that seeks to file under seal any Protected Material must comply  
7 with Local Rule 79-5.1. Protected Material may only be filed under seal pursuant to  
8 a court order authorizing the sealing of the specific Protected Material at issue.

9 13. **USING PROTECTED MATERIAL AT TRIAL**

10 Not later than the deadline for filing pretrial disclosures pursuant to Rule  
11 26(a)(3) of the Federal Rules of Civil Procedure, the Parties shall meet and confer  
12 regarding the procedures for use of Protected Material at trial and shall move the  
13 Court for entry of an appropriate order. In the event that the Parties cannot agree  
14 upon the procedures for use of Protected Material at trial, each Party shall include a  
15 notation in its pretrial disclosures that the intended disclosure contains Protected  
16 Material. The Parties may object to the Disclosure of Protected Material pursuant to  
17 Rule 26(a)(3)(B) of the Federal Rules of Civil Procedure, and the Court shall resolve  
18 any outstanding disputes over such Disclosure.

19 14. **FINAL DISPOSITION**

20 Within 90 days after the final disposition of this action, as defined in paragraph  
21 4, each Receiving Party must return all Protected Material to the Producing Party or  
22 destroy such material. As used in this subdivision, “all Protected Material” includes  
23 all copies, abstracts, compilations, summaries, and any other format reproducing or  
24 capturing any of the Protected Material. Whether the Protected Material is returned  
25 or destroyed, the Receiving Party must submit a written certification to the Producing  
26 Party (and, if not the same person or entity, to the Designating Party) by the 90 day  
27 deadline that (1) identifies (by category, where appropriate) all the Protected Material  
28 that was returned or destroyed and (2) affirms that the Receiving Party has not

1 retained any copies, abstracts, compilations, summaries or any other format  
2 reproducing or capturing any of the Protected Material. Notwithstanding this  
3 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
4 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
5 deposition and trial exhibits, expert reports, attorney work product, and consultant  
6 and expert work product, even if such materials contain Protected Material. Any  
7 such archival copies that contain or constitute Protected Material remain subject to  
8 this Protective Order as set forth in Section 4 (DURATION).

9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

10  
11 DATED: March 1, 2019

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

12  
13  
14 By: /s/ Jared L. Palmer  
JOHNNIE A. JAMES  
ALEXANDER M. CHEMERS  
15 JARED L. PALMER  
16 JOHN PATRICK SCHREIBER

17 Attorneys for Defendant  
FLOWERS BAKING CO. OF  
18 HENDERSON, LLC (also sued as FBC  
OF HENDERSON, LLC)

19 DATED: March 1, 2019

DAVID YEREMIAN & ASSOCIATES, INC.

20  
21 By: /s/ Alvin B. Lindsay  
22 DAVID YEREMIAN  
23 ALVIN B. LINDSAY

24 Attorneys for Plaintiff  
25 RICHARD BUTTON

26 **FILER'S ATTESTATION**

27 Pursuant to Local Rule 5-4.3.4(a)(2)(i) regarding signatures, I attest that all  
28 other signatories listed, and on whose behalf this filing is submitted, concur in the



document's content and have authorized the filing.

DATED: March 1, 2019

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By: /s/ Jared L. Palmer

JOHNNIE A. JAMES  
ALEXANDER M. CHEMERS  
JARED L. PALMER  
JOHN PATRICK SCHREIBER

Attorneys for Defendant  
FLOWERS BAKING CO. OF  
HENDERSON, LLC (also sued as FBC  
OF HENDERSON, LLC)

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: March 6, 2019

/ s /

Honorable Alka Sagar  
United States Magistrate Judge



1  
2  
3 **EXHIBIT A**

4 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

5 I, \_\_\_\_\_ [print or type full name], of  
6 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
7 that I have read in its entirety and understand the Stipulated Protective Order that  
8 was issued by the United States District Court for the Central District of California  
9 on [date] in the case of *Richard Button v. Flowers Baking Co. of Henderson, LLC*,  
10 Case No. 2:18-cv-10116-RGK-ASx. I agree to comply with and to be bound by all  
11 the terms of this Stipulated Protective Order and I understand and acknowledge that  
12 failure to so comply could expose me to sanctions and punishment in the nature of  
13 contempt. I solemnly promise that I will not disclose in any manner any information  
14 or item that is subject to this Stipulated Protective Order to any person or entity  
15 except in strict compliance with the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court  
17 for the Central District of California for the purpose of enforcing the terms of this  
18 Stipulated Protective Order, even if such enforcement proceedings occur after  
19 termination of this action.

20 I hereby appoint \_\_\_\_\_ [print or type full name] of  
21 \_\_\_\_\_ [print or type full address and  
22 telephone number] as my California agent for service of process in connection with  
23 this action or any proceedings related to enforcement of this Stipulated Protective  
24 Order.

25 Date: \_\_\_\_\_

26 City and State where sworn and signed: \_\_\_\_\_

27 Printed name: \_\_\_\_\_

28 Signature: \_\_\_\_\_